



IN THE MATTER OF:)	
)	
PETER V. SMILDE,)	CHARGE NO: 2000 CA 2622
Complainant,)	EEOC NO: 21 BA 02102
)	ALS NO: 11599
and)	
)	
GOVERNMENT CAREER’S CENTER)	
OF CHICAGO, L.L.C.,)	
Respondent.)	

On August 21, 2001, the Illinois Department of Human Rights filed a Complaint on behalf of Complainant, Peter V. Smilde. The Complaint alleged that Respondent, Government Career's Center of Chicago, L.L.C., discriminated against him based upon his age.

On November 14, 2001, Complainant presented himself to the Commission and filed his Amended Complaint with proof of service. Respondent or their counsel failed to appear again. On November 14, 2001, an Order of Default was entered against Respondent for failing to appear or otherwise answer the Complaint.

For unknown reasons, Respondent failed to file a Verified Answer to the Commission's Complaint and failed to appear for the scheduled Public Hearing or the scheduled status hearing. Despite being served with notice and with a copy of the order requiring attendance, Complainant never responded or appeared before the Commission. The matter is now ready for decision.

Because Respondent failed to appear or file an answer, a default order was entered against it. Subsequently, a hearing to prove up Complainant's damages was held, via a telephone conference, on February 28, 2003. Complainant participated, *pro se*, while Respondent failed to appear or participate by being unavailable. According, the matter is now ready for decision.

FINDINGS OF FACT

The findings of fact are based upon the case file for this matter. The facts marked with asterisks are facts which were alleged in the Complaint in this matter. Those facts were admitted as a result of Respondent's failure to file an Answer or otherwise appear in this matter.

1. This matter was set for a Public Hearing for the first time on October 10, 2001, at 10:00 a.m. Notice was sent to both parties.
2. On October 10, 2001, Respondent failed to appear for the Public Hearing.
3. On October 10, 2001, an Order was entered setting a status date for November 14, 2001, at 10:00 a.m.
4. On November 14, 2001, the Complainant appeared, while Respondent or their counsel failed to appear as ordered.

5. On November 14, 2001, an Order of Default was entered against Respondent for failing to Appear or otherwise Answer the Complaint.
6. On February 28, 2003, a Public Hearing on Damages was held, via the telephone. Complainant participated, while Respondent failed to participate.
7. At the time of the incidents alleged herein, Complainant's age was 64 years.*
8. On or about April 24, 2000, Complainant interviewed with one of Respondent's career counselors and Alan E. Winner, Chief Manager; age 51.*
9. Respondent refused to give Complainant an application form on or about April and May of 2000.*
10. Respondent did not refuse to give an application form to similarly situated younger applicants.*
11. Complainant was damaged in the amount of \$35,000.00 for lost employment and back wages.
12. Complainant was damaged in the amount of \$20.00 for travel expenses.
13. Complainant is not entitled to any attorney fees.

CONCLUSIONS OF LAW

1. Complainant is an “aggrieved party” and Respondent is an “employer” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)(1)(c), respectively.
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent’s failure to appear at the October 10, 2001 scheduled Public

Hearing and their failure to appear at the November 14, 2001 status hearing has resulted in unreasonable delay in these proceedings justifying a recommendation for default.

4. Respondent refused to give Complainant an application form because of his age in violation of Section 2-102(B) of the Act.

5. Complainant is entitled to damages for Respondent's violation of the Act.

DETERMINATION

Respondent has repeatedly failed to comply with orders of this tribunal, resulting in an unreasonable delay of these proceedings. This conduct is unreasonable and supports a recommendation for default. Complainant is entitled to damages as a result of Respondent's violation of the Act.

DISCUSSION

This matter was set for a Public Hearing for the first time on October 10, 2001, at 10:00 a.m. Notice was sent to both parties. On October 10, 2001, Respondent failed to appear for the Public Hearing. On October 10, 2001, an Order was entered setting a status date for November 14, 2001, at 10:00 a.m. Part of the Order read, "Both parties must appear; the failure of either party to appear may result in the dismissal or default of this matter."

On November 14, 2001, Complainant appeared, while Respondent or their counsel failed to appear as ordered. On November 14, 2001, an Order of Default was entered against the Respondent.

Respondent failed to appear for the scheduled Public Hearing and failed to appear for the scheduled status hearing. At this point, Respondent has taken no action to Appear, Answer or otherwise plead in this case. Respondent has ignored orders directing them to

appear in front of this Commission. The Respondent has also failed to respond to the Commission's warning that an Order of Default would be entered against them if they failed to appear before the Commission.

Respondent's failure to Appear, Answer or otherwise plead with respect to the Complaint filed with the Commission has unreasonably delayed the proceedings in this matter, and it appears that Respondent has failed to notify the Commission as to the reason why they have failed to appear. Thus, it is appropriate to hold Respondent in default in this matter.

On November 14, 2001, the Administrative Law Judge in this matter entered an order of default against Respondent. As a result, there are no liability issues to discuss. Only damages issues remain to be determined. The damages that Complainant requested during the hearing was \$35,000.00 for lost wages for lost employment due to Respondent's refusal to consider him for employment. The Illinois Human Rights Act prohibits discrimination in employment with regard to refusals to hire. 775 ILCS 5/2-102(A). Additionally, Section 8A-104 of the Act provides, in part, for an award of actual damages, as reasonably determined by the Commission, for injury or loss suffered by a Complainant whose civil rights have been violated.

In the ordinary case, in order to receive back pay, the complainant must first advance his theory of likely earnings along with supporting evidentiary material. Clark v. Illinois Human Rights Commission, 141 Ill. App. 3d 178, 440 N.E.2d 29 (1st Dist. 1986). This requirement would be appropriate where the question of damages is in actual dispute. Such is not the case here. Respondent failed to appear for the damages hearing and failed to dispute the amount requested by Complainant. The only evidence pertaining

to damages is the unrebutted testimony of Complainant. As such, any doubts or ambiguities regarding the precise amount of the awards are to be resolved against the discriminating employer. Clark v. Human Rights Commission, 141 Ill.App.3d 178, 490 N.E.2d 29 (1st Dist. 1986) and Martin and DuMont Company, Ill.HRC Rep., 1983 CF 2407 (Nov. 13, 1989). Therefore, I find that the Complainant is entitled to the \$35,000.00 in lost wages he requested.

The Complainant further requested the amount of \$1,500.00 for attorney fees because he represented himself in this matter. Complainant failed to present any case law to support his contention that a *pro se* litigant could recover for attorney fees and I know of none. Thus, I find that Complainant is not entitled to attorney fees. Complainant also requested the amount of \$20.00 for travel expenses related to pursuing this matter. I find the amount to be reasonable and that he is entitled to the amount requested.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

- A. That the Commission enter an order finding that Respondent is in default, sustaining the Complaint as to liability.
- B. Respondent pay to Complainant the amount of \$35,000.00 for lost wages.
- C. Respondent pay to Complainant the amount of \$20.00 for the cost of travel expenses.
- D. Respondent be ordered to cease and desist from further acts of unlawful discrimination on the basis of age.

HUMAN RIGHTS COMMISSION

BY:

NELSON E. PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 4, 2003